

NOTICE
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2022 IL App (5th) 200137-U

NO. 5-20-0137

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Fayette County.
)	
v.)	No. 17-CF-204
)	
ALEXANDER BECCUE,)	Honorable
)	M. Don Sheafor Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WHARTON delivered the judgment of the court.
Justices Cates and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* The court did not improperly base the defendant’s 30-year extended term sentence for second degree murder on speculation, generalizations about methamphetamine users, or other outside information and did not reject the jury’s finding that the defendant subjectively believed the use of force was necessary for self-defense. The court expressly considered a factor inherent in the offense of second degree murder—that his conduct caused serious harm—as a factor in aggravation and on the record before us, we cannot determine with certainty that this did not result in a harsher sentence for that offense. Although the court erroneously found that extended term sentences were appropriate for both charges and applied the wrong sentencing statute in sentencing the defendant to 10 years for unlawful possession of a weapon by a felon, the sentence was authorized under the correct sentencing provision as a nonextended term sentence.

¶ 2 The defendant, Alexander Beccue, was convicted of second degree murder (720 ILCS 5/9-2(a) (West 2016)) and unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)) in the shooting death of Joshua Smith. The court found that extended term sentences were appropriate for both

charges based on the defendant's two previous felony convictions (730 ILCS 5/5-5-3.2(b)(1) (West 2016)). The court sentenced the defendant to 30 years in prison on the murder charge and 10 years on the unlawful possession of a weapon charge, to be served concurrently. On appeal, the defendant challenges both sentences. He argues that the court abused its discretion in sentencing him to 30 years on the second degree murder charge because (1) its findings were based on speculations and generalizations about methamphetamine users and contradicted the jury's finding that a mitigating factor was present, and (2) the court improperly considered harm to the victim, a factor inherent in the offense, as a factor in aggravation. He argues that an extended term sentence on the lesser charge of unlawful possession of a weapon by a felon was not authorized by statute. He acknowledges that the applicable statute authorizes a 10-year nonextended term for that offense, but he argues that we must remand for resentencing because the court applied the wrong sentencing provisions. We affirm the defendant's sentence for unlawful possession of a weapon by a felon. However, we vacate the defendant's second degree murder sentence, and we remand for sentencing on that charge without consideration of harm to the victim as a factor in aggravation.

¶ 3

I. BACKGROUND

¶ 4 Prior to the events at issue in this case, the defendant struggled with methamphetamine addiction. He successfully completed a substance abuse treatment program in December 2016, but he began using methamphetamine again early in 2017. At trial, the defendant testified that his use gradually increased until he was taking methamphetamine multiple times every day.

¶ 5 On August 10, 2017, when the events at issue began, the defendant had taken methamphetamine 5 to 10 times. That evening, he went to the home of Chelsi Beesley to buy methamphetamine. He had met Beesley a few months earlier through a mutual acquaintance, and she became his primary supplier of methamphetamine. The two also became friends, and shortly

before the events at issue, their relationship became sexual. Beesley introduced the defendant to Joshua Smith, with whom she had been close friends for several years. Beesley, Smith, and the defendant took methamphetamine together on a few occasions.

¶ 6 At the defendant's June 2019 trial, Beesley and the defendant gave accounts of what occurred that night. Beesley testified that on the evening of August 10, 2017, Smith called her and told her that he "needed a buzz." They made arrangements for Smith to sell Beesley a gun for \$50, and she would "catch him a buzz" while he was there. In addition, they planned to go somewhere near the river, where Smith would teach Beesley how to shoot the gun. While she was waiting for Smith to arrive, Beesley received a message from the defendant asking to buy methamphetamine from her.

¶ 7 According to Beesley, Smith arrived at approximately 9:30 or 10 p.m., and they waited for the defendant, who arrived approximately an hour later. She testified that the defendant was "all flustered" upon his arrival and acted paranoid. She explained that he claimed that he saw someone on the property watching him. Beesley testified that she and Smith "kind of shrugged it off," and that the three of them took methamphetamine together.

¶ 8 Beesley further testified that Smith left to take some marijuana to his father's house. The defendant remained at her house and talked to Beesley while she cleaned her kitchen. She estimated that Smith was away for approximately one hour. Beesley stated that during this time, the defendant continued to behave strangely. She noticed that he had a pair of jersey gloves "flopped over in his jogging pants." The defendant asked Beesley to plug in a security light for his car, but she told him to do it himself. The defendant went to Beesley's garage to plug in the light. First, however, he put on boots. According to Beesley, he did not normally wear boots. The defendant coaxed Beesley's dog into the garage with him. As he stepped into the garage, Beesley

saw the defendant reach back and wipe off the doorknob. He was wearing the gloves. He then slammed the door closed behind him.

¶ 9 Beesley next testified that Smith returned soon after the defendant went into her garage. When she answered the door, she tried to persuade Smith to leave, telling him that the defendant was “not acting right.” However, Smith pushed open the door, entered the house, and said, “I’ve got something for him if he keeps acting weird.” Smith opened a bag he was carrying and showed Beesley the gun he intended to sell to her. Also in the bag were zip ties, rope, and pocketknives. Beesley was asked where the defendant was at this time, and she stated that he was still in the garage.

¶ 10 Beesley and Smith then went to the kitchen. Beesley testified that she continued cleaning the kitchen while Smith sat at the kitchen table and began loading the magazine for the gun. She noted that the gun itself remained in the bag, which was on the floor next to Smith. The defendant entered the house while Beesley was facing away from the door, putting something into a cabinet. She knew the defendant had entered because she heard her dog’s nails on the floor and assumed the defendant had entered along with the dog. Beesley did not hear the defendant or Smith say anything to each other. When she turned around, she saw the defendant in what she described as a “shooting stance,” holding a gun. She testified that the defendant shot Smith in the left side of his head from approximately three feet away.

¶ 11 Beesley testified that the defendant then pointed the gun at her and said, “I can’t do you too.” She told him to either “help us” or “get out.” The defendant fled the house, and Beesley called 9-1-1.

¶ 12 On cross-examination, Beesley admitted that she did not initially tell police either that she had been in a sexual relationship with the defendant or that she used methamphetamine. She

testified that methamphetamine can make some people paranoid and that she was aware that the defendant had been paranoid for a while before the incident. She further testified that the defendant and Smith only saw each other a few times when both were with her, and that they had never previously had any altercations or arguments.

¶ 13 The defendant testified that on the day of the shooting, he was tired and paranoid. He had not slept the previous night, and he had smoked methamphetamine several times that day. He stated that he drove to Beesley's house to obtain methamphetamine. He explained that he always carried a gun when he went there because he had been robbed by one of her other customers on a previous occasion. He borrowed the vehicle he drove and the gun he carried from his girlfriend, Bridgett Crockett, without her consent.

¶ 14 The defendant further testified that while he was at Beesley's house on the night of the shooting, he heard voices telling him that Smith intended to harm him. He continued to hear those voices while Smith was away. The defendant was in the garage playing with Beesley's dog when Smith returned. He testified that when he reentered the house, he saw Smith loading the pistol magazine. He then "freaked out" and shot Smith, believing that Smith was going to kill him. The defendant admitted that he next pointed the gun at Beesley. He told her that he did not want to hurt her. He then fled the house and drove away.

¶ 15 The defendant next testified about his conduct following the shooting. He stated that he drove directly from Beesley's house to the Wren Bridge, where he threw Crockett's gun into the river. Asked why he did this, the defendant stated that he was frightened and "still paranoid." After disposing of the gun, the defendant drove around aimlessly until he ran out of gas. Then he attempted to walk home, but he got lost. Eventually, he hitchhiked and arrived home at 9:30 in the

morning. Crockett told him that the police were looking for him and that he should turn himself in.

¶ 16 The defendant was asked about the video-recorded statements he made to police, which had been admitted into evidence and played for the jury earlier in the trial. The defendant acknowledged that he initially lied to the interrogating officer. He was specifically asked about a statement in which he admitted to disposing of some articles of clothing he was wearing when the shooting occurred. The defendant acknowledged that the statement sounded like something that likely happened; however, he could no longer recall disposing of clothing or making the statement.

¶ 17 The defendant also described an incident that occurred a few weeks before the shooting. The defendant, who was under the influence of methamphetamine at the time, was found walking down the street, naked and eating grass. He was taken to the hospital.

¶ 18 The defendant successfully requested a jury instruction on second degree murder based on a theory that he subjectively, but unreasonably, believed he was acting in self-defense when he shot Smith. The jury found him guilty of second degree murder and unlawful possession of a weapon by a felon, but not guilty of first degree murder.

¶ 19 The presentence investigation report (PSI) revealed that the defendant reported that he had a good relationship with his mother, but he did not have a relationship with his biological father. The PSI further revealed that the defendant began using marijuana and drinking alcohol at the age of 15 and began using methamphetamine at the age of 19. He dropped out of high school in eleventh grade, but subsequently obtained his general equivalency diploma (GED). The PSI revealed that he had been dishonorably discharged from the military due to a positive drug test for marijuana.

¶ 20 The PSI further revealed that the defendant had two previous convictions for possession of methamphetamine manufacturing materials (720 ILCS 646/30(a) (West 2012)), one in 2013, the other in 2014. He was sentenced to probation for the 2013 offense; however, his probation was revoked due to a violation of the conditions of probation. The defendant was subsequently sentenced to four years in prison on both charges, to be served concurrently. He stopped using drugs while in prison on the earlier charges, but he started again a few months after his release. The PSI indicated that the defendant had been fired from a previous job for smoking marijuana. Finally, the PSI indicated that the defendant had successfully completed a substance abuse treatment program in December 2016.

¶ 21 The court held a sentencing hearing in August 2019. The State offered the testimony of four of Smith's friends and relatives as evidence in aggravation. Each witness testified concerning the devastating impact Smith's death had on them and other family members. In particular, Smith's uncle testified that Smith's father could not be present at the hearing and was "on the verge of a nervous breakdown." Witnesses also expressed anger at the fact that the jury found the defendant guilty of second degree murder rather than first degree murder.

¶ 22 In mitigation, the defendant presented the testimony of James Palmer and Fayette County Sheriff's Deputy Greg Kline, leaders of a program called Celebrate Recovery. Palmer and Kline explained that the defendant voluntarily participated in Celebrate Recovery, which is a faith-based program that helps participants recover from addiction or other types of "hurts and habits." Both testified that the defendant had expressed remorse to them, and that they believed his expressions of remorse were genuine.

¶ 23 The defendant's grandmother, Candy Arnold, also testified in mitigation. She, too, stated that the defendant had expressed remorse over Smith's death and that he acknowledged

responsibility. Arnold also testified that she helped raise the defendant during the early years of his childhood because his mother, Christy Beccue, was 16 years old and still in high school when he was born. Arnold testified that the defendant's biological father, Greg Gathe, was not involved in his life, largely because she and Christy did not want Gathe or his family to be involved.

¶ 24 Finally, Arnold testified concerning the defendant's drug use in the months leading up to the shooting. She stated that she knew the defendant had started using methamphetamine in 2017 after remaining clean for some time because he became paranoid. She explained that shortly before the shooting, the defendant claimed that "people were watching him and that they could see him from telephone poles."

¶ 25 The defendant's final witness in mitigation was Christy Beccue. She testified that her husband, Duane Beccue, adopted the defendant when he was 11 years old. She further testified that the defendant dropped out of school at the age of 17, and he then joined the military. She noted that he was involved in a program that would allow him to obtain his GED while serving in the Army. However, that program ended. Beccue stated that the defendant left the Army and he obtained his GED on his own.

¶ 26 Beccue next testified that the defendant began spending time with his biological father, Gathe, over a period of approximately six months. She noted that Gathe had been in prison multiple times, "generally" for drug-related offenses. Beccue testified that when the defendant began spending time with Gathe, she noticed changes in his behavior. Specifically, she noticed that the defendant became "more distant" and spent less time with her. She testified that this type of behavior indicated to her that the defendant had started using methamphetamine again.

¶ 27 Beccue was asked about the difference between her son's behavior when sober and when using methamphetamine. Defense counsel asked, "Did he seem like a different person?" Beccue

replied, “Yes.” She testified that when the defendant was using methamphetamine during the summer of 2017, he was “paranoid. Very, very paranoid.” Finally, Beccue testified that the defendant had “grown up” while he was in prison awaiting trial and sentencing in this case, and that he had shown remorse and taken responsibility for his actions.

¶ 28 The prosecutor argued that four statutory factors in aggravation were present: (1) the defendant’s conduct caused serious harm—the death of Joshua Smith; (2) the defendant was on parole when the offenses were committed; (3) the defendant had a history of prior criminal convictions; and (4) a lengthy sentence was necessary to deter others. The prosecutor further argued that the defendant did not show remorse for his actions, emphasizing the calculated manner in which the defendant disposed of potential evidence (the gun and his clothing) after the shooting. The State requested the maximum extended term sentences on both charges.

¶ 29 The defense acknowledged that no statutory factors in mitigation applied and that the four aggravating factors highlighted by the State were applicable. Defense counsel argued, however, that the court could not impose the maximum sentence based on the result (Smith’s death) because that is inherent in the offense of second degree murder. We note that, while neither party expressly differentiated between the two charges in their arguments, these seemingly inconsistent arguments suggest that counsel may have intended to (1) acknowledge that the harm to Smith was an applicable sentencing factor with respect to the charge of unlawful possession of a weapon by a felon, but (2) argue that the factor was inapplicable to the second degree murder charge.

¶ 30 Counsel further argued that there were nonstatutory mitigating factors the court should consider. In particular, he emphasized that the jury’s verdict indicated that jurors believed the defendant acted under a subjective but unreasonable belief that he needed to defend himself and had rejected the State’s assertion that the shooting was premeditated. Counsel further argued that

the defendant had shown remorse for his actions and that although his background was not an excuse for his behavior, it did have an impact. Counsel argued that the defendant's criminal history was not extensive, involving only two prior nonviolent felonies. He asked for a sentence in "the lower end of double digits," explaining that the defendant recognized that anything less than that was unlikely.

¶ 31 The court allowed the defendant to make a statement in allocution before ruling from the bench. Because many of the defendant's arguments on appeal relate to specific statements the court made in addressing him, we will set forth the court's statements in detail.

¶ 32 The court first noted that the defendant had two prior convictions for methamphetamine offenses, and that his probation on the first of those convictions had been revoked. Addressing the defendant, the court stated as follows:

"Sir, that indicates to me that you can't follow orders and that you can't do what you're supposed to do as set forth by the court system ***. I guess my question I always have to people in these types of situations is *** that you would think to yourself, 'wow, this can get me in trouble, I need to stop doing this, I'm never going to do meth again and I'm going to change my life and everything is going to be better.' I assume that when you were first picked up on that, that's what you thought, and that's what they all seem to tell me every time someone comes in on the first conviction ***."

The court noted, however, that the defendant was charged with his second methamphetamine charge within a year after the first conviction. The court stated:

"I'm assuming after that happened, I just do, that you just, well, 'look where I got over this meth. Well, I better quit this, I'm never going to touch it again *** because I finally learned my lesson,' and lo and behold, this new crime comes up after you are released from prison."

¶ 33 The court next highlighted additional information contained in the PSI. In particular, the court noted that the defendant was discharged from the military after a positive drug test and that he was fired from a job due to drug use. The court further noted that at one point, the defendant worked as a tattoo artist, earning \$1000 per week. The court stated, however, that he failed to pay the fines from his prior drug convictions during this time. The court stated, “I’m presuming it went to meth or other things that you thought were way more important than trying to do what is right.”

¶ 34 Next, the court addressed the general problems of methamphetamine addiction in Fayette County, noting that there are more methamphetamine-related cases than the court system can handle. The court then stated, “This is what I learned by listening to this trial ***.” The court noted that most methamphetamine users seem not to have a driver’s license or a job, yet most seem to have guns. The court observed that “some of the methamphetamine then makes people paranoid where they are not thinking rationally, but they still know what they are doing.” The court explained:

“What I mean by that, on the one hand you claim you were paranoid to the point that you really thought Josh was going to shoot you and so you had to do that because you were paranoid, but at the same time you have the nice calm, cool, collected thoughts to throw the gun in the river, the bloody clothes and whatever away ***.”

The court commented that this was “almost a really hard thing to figure out.”

¶ 35 The court then reiterated his concern that “nobody seems to want to quit meth unless and until the law makes them quit using it.” The court told the defendant, “I’m sure you told yourself two or three times before that I’m never going to do this again *** but then at the same time you just jump right into it and can’t wait.”

¶ 36 The court next turned his attention to the sentence to be imposed. The court noted that the defendant was extended-term eligible based on his prior convictions. The court then noted that, while the jury’s finding of a mitigating factor that lowered the offense to second degree murder meant that the applicable sentencing range was lower, the court was not required to consider this as an additional factor in mitigation within that applicable sentencing range. The court further noted that whether he agreed with the jury’s determination that the defendant’s conduct constituted second degree murder rather than first degree murder was not a relevant consideration and would not play a role in his sentencing decision.

¶ 37 Next, the court considered statutory factors in mitigation and aggravation, addressing many of the factors nearly verbatim from the statutes. In particular, the court noted that one statutory factor in mitigation is that the defendant’s conduct was unlikely to recur. 730 ILCS 5/5-5-3.1(a)(8) (West 2016). The court stated, “I think that you’d behave for a little while and go right back to it again.” The court ultimately found that no statutory factors in mitigation applied, although the court did find that the defendant had expressed remorse.

¶ 38 In addressing statutory factors in aggravation, the court began by stating, “number one says that your conduct caused or threatened serious harm, and the answer is yes, it did.” See *id.* § 5-5-3.2(a)(1). The court went on to find that the defendant had a prior criminal history (*id.* § 5-5-3.2(a)(3)), that a lengthy sentence was necessary to deter others (*id.* § 5-5-3.2(a)(7)), and that the defendant was on mandatory supervised release when the offenses were committed (*id.* § 5-5-3.2(a)(12)). The court also highlighted the defendant’s testimony at trial that he was still feeling paranoid when he threw the gun off the bridge after the shooting. The court noted that if the defendant had encountered other people at that time, he might have thought they were a danger

and killed them too. The court stated, “I cannot sentence you for a might, I’m just telling you that really is necessary to deter others in this particular case.”

¶ 39 The court sentenced the defendant to 30 years in prison for second degree murder and 10 years for unlawful use of a weapon by a felon, to be served concurrently. The court noted that both sentences were extended term sentences. We note that unlawful use of a weapon by a felon is a Class 3 felony. 720 ILCS 5/24-1.1(e) (West 2016). Generally, the sentence for a Class 3 felony is 2 to 5 years, with an extended term sentence of 5 to 10 years. 730 ILCS 5/5-4.5-40(a) (West 2016). However, the offense of unlawful use of a weapon by a felon has its own statutorily prescribed nonextended term sentence range of 2 to 10 years. 720 ILCS 5/24-1.1(e) (West 2016).

¶ 40 The defendant filed a motion to reconsider sentence. He argued that (1) the court did not consider mitigating factors, such as the defendant’s remorse, relative lack of criminal history, and life circumstances; (2) the court considered victim impact testimony that was unduly inflammatory and prejudicial; and (3) the court was prejudiced against the defendant.

¶ 41 At a hearing on the defendant’s motion, the defendant argued that the court failed to consider the mitigating evidence he presented concerning his drug use, life circumstances, and remorse. He further argued that it was inappropriate to impose a maximum sentence based on a belief that the jury was incorrect in finding him guilty only of second degree murder. Defense counsel acknowledged that the court would likely say that this was not part of the rationale underlying the sentence. The defense asked the court to reconsider and instead impose a sentence of between 15 and 20 years on the second degree murder charge.

¶ 42 In response, among other things, the prosecutor emphasized that Smith was dead. He argued that the defendant’s sentence of 30 years should stand because “Joshua K. Smith deserves at least that.”

¶ 43 In rebuttal, defense counsel argued, “The result itself, the death, is presumed in a conviction for any kind of murder, second degree murder or first degree murder. Part of our point is that the result itself alone shouldn’t be enough to get my client the maximum sentence.”

¶ 44 In ruling from the bench, the court stated that one factor “very much against Mr. Beccue [was] his prior record.” The court emphasized that the defendant’s two previous felonies also involved methamphetamine, and the court noted that he might have imposed a lighter sentence if the defendant did not have that history. The court further emphasized that the need to deter others was an important consideration because “methamphetamine is a scourge in this county.” The court concluded by stating:

“The bottom line is, he does have a prior criminal history. Somebody actually died as a result of his actions. Even though it was second degree murder, it is still a murder under the law, and the Court believes that the sentence it gave then is still the sentence that should remain.”

The court denied the defendant’s motion. This appeal followed.

¶ 45 **II. ANALYSIS**

¶ 46 On appeal, the defendant does not challenge his convictions, but he challenges both of his sentences. He argues that the court abused its discretion in sentencing him to 30 years on the second degree murder charge because (1) the court relied on speculation, generalizations, and outside evidence and made findings that were contrary to the jury’s finding that he acted under a subjective belief that he needed to act in self-defense; and (2) the court improperly considered Smith’s death, a factor inherent in the offense, as a factor in aggravation. The defendant further argues that we must remand for resentencing on the charge of unlawful possession of a weapon by a felon because

the court applied the wrong sentencing provision and incorrectly found that an extended term sentence was authorized for both charges.

¶ 47 The defendant acknowledges that he did not preserve any of these claims for appellate review. Although he did argue to the trial court orally that Smith's death could not be considered as a factor in aggravation for the second degree murder sentence and that the court could not allow any disagreement the judge might have with the jury's verdict to impact the sentence. However, he did not include these issues in his written motion to reconsider sentence, and he did not raise the other issues before the trial court at all. See *People v. Newlin*, 2014 IL App (5th) 120518, ¶ 21 (explaining that to preserve an issue for appellate review, a defendant must both object contemporaneously and include the issue in a written postsentencing motion). The defendant urges us to consider his claims under the plain error doctrine.

¶ 48 Under that doctrine, we may consider claims of error that have been forfeited if (1) the evidence is closely balanced or (2) the error alleged is of such a magnitude that it undermined the fairness of the defendant's trial and the integrity of the judicial process. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 7. Illinois courts have found each type of sentencing claim raised by the defendant in this case to be reviewable under the second prong of the plain error doctrine. See *id.* (finding second prong plain error review appropriate when a trial court considers "erroneous aggravating factors"); *People v. Ross*, 303 Ill. App. 3d 966, 984-85 (1999) (finding second prong plain error where the trial judge's sentence was based, in part, on a finding that the shooting was gang-related, a finding that was not supported by the evidence); *People v. Lindsay*, 247 Ill. App. 3d 518, 527 (1993) (finding plain error review of the erroneous imposition of an extended term sentence appropriate because it "affected substantial rights" of the defendant). The first step in

plain error review is to determine whether any error occurred at all. *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 7. With this in mind, we turn our attention to the merits of the defendant’s contentions.

¶ 49 A. Sentence for Second Degree Murder

¶ 50 1. *Speculation, Generalization, Outside Information, and Rejection of the Jury’s Verdict*

¶ 51 The defendant’s first challenge to his 30-year sentence for second degree murder is that the court relied on various improper factors in imposing the sentence. In particular, he complains that (1) the court speculated about his efforts to stop using methamphetamine and about his likelihood of recidivism; (2) the court made generalizations about methamphetamine users; (3) the court relied on facts outside the record—specifically, the court’s observations of other criminal defendants in cases involving methamphetamine; and (4) the court relied on its own factual findings that conflicted with the jury’s finding that the defendant was acting under the unreasonable belief that he had to act in self-defense. We are not persuaded.

¶ 52 The trial court has broad discretion in sentencing. Because the trial judge had the opportunity to observe the defendant throughout the proceedings, he was in a far better position than we are to weigh the relevant factors. *People v. Hampton*, 2021 IL App (5th) 170341, ¶ 135. We must therefore accord great deference to the court’s determination. *Id.* A sentence within the statutorily prescribed range is presumed to be proper. *Id.* ¶ 136. In addition, there is a strong presumption that the trial court made its sentencing decision based on correct legal reasoning. A defendant can only overcome this presumption “by an affirmative showing that the sentence imposed varies greatly from the purpose and spirit of the law or manifestly violates constitutional guidelines.” *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 53 Here, the defendant’s second degree murder sentence is within the statutory range, and is therefore presumed to be appropriate. The defendant does not argue that the sentence itself is

inherently at odds with the spirit and purpose of our sentencing laws. Instead, as we have already stated, he contends that the court relied on outside information and improper speculation in arriving at that sentence. We presume that trial judges consider only competent evidence in making their findings. *People v. Tye*, 141 Ill. 2d 1, 26 (1990). Moreover, we must evaluate the record as a whole rather than focusing on isolated statements made by the court during sentencing. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009).

¶ 54 In arguing that the court improperly relied on speculation, the defendant highlights the trial judge's statements noting that he assumed the defendant promised himself he would stop using methamphetamine after each of his previous convictions for possession of methamphetamine manufacturing materials. The defendant notes that there was no evidence in the record that he made any such "sobriety pledges." Viewed in context, however, we find that the statements challenged by the defendant were simply part of the court's commentary on the defendant's apparent inability to stop using methamphetamine.

¶ 55 Similarly, the defendant asserts that the court engaged in speculation concerning his likelihood of recidivism. We disagree. The record clearly establishes that the defendant had stopped using methamphetamine while he was in prison, but that he started again shortly after his release. The record further establishes that the defendant began using methamphetamine a few months after successfully completing substance abuse treatment. The defendant himself put on evidence that his methamphetamine use led to the charges at issue in this case, and his previous criminal convictions were for possession of methamphetamine manufacturing material, a charge inherently related to methamphetamine use. In determining whether a defendant is likely to reoffend, a trial court must necessarily make a prediction that includes an element of speculation. Here, the court's prediction is rationally based on solid evidence.

¶ 56 The defendant next asserts that the court relied upon generalizations about methamphetamine use based on the trial judge's observations of other defendants. He likens the instant case to *People v. Dameron*, 196 Ill. 2d 156 (2001). We find *Dameron* distinguishable.

¶ 57 That case involved the imposition of the death penalty after the defendant waived his right to a jury during the sentencing phase. *Id.* at 159. On appeal, the supreme court held that the defendant's jury waiver was not valid. As a result, the court reversed his death sentence and remanded the matter for a new sentencing hearing. *Id.* at 171. Pertinent to our discussion, the defendant also challenged his death sentence by arguing that the trial court erroneously relied on evidence outside the record. *Id.* The supreme court went on to address that claim "because of the importance of the issue involved." *Id.*

¶ 58 At issue in *Dameron* was the defendant's argument that the trial judge relied on a social science book and the transcript of a 1966 murder trial at which his father was the presiding judge. *Id.* The trial judge discussed the book extensively during the sentencing hearing. *Id.* at 172-74. Among other things, he stated that " '[t]he significance of [the book] to the case at hand is because of the striking resemblance that the family from which the defendant comes bears to the family of a person [discussed in the book].' " *Id.* at 172. The judge also quoted from a passage in the book discussing "another disadvantage" of prisons. *Id.* at 173. He quoted from another portion of the book opining that many adults who commit violent crimes were childhood bullies who were used to getting their way through violence, something that renders rehabilitation of violent offenders "increasingly difficult." *Id.* at 176-77.

¶ 59 The trial judge in *Dameron* also quoted whole paragraphs from his father's sentencing decision (*id.* at 177-78), explaining that what his father said about " 'the circumstances in which he found himself at that time' " also applied to the circumstances involved in sentencing *Dameron*

(*id.* at 177). He then compared the brutality of the case his father presided over with the facts and circumstances of the case before him. *Id.* at 178.

¶ 60 The supreme court rejected the State’s contention that the trial judge’s comments on the social science book were “a mere prelude” to his sentencing decision. *Id.* at 174. The court reached a similar conclusion with respect to his references to his father’s sentencing decision in the 1966 murder case. *Id.* at 178. In reaching this decision, the supreme court found it relevant that the trial judge spoke at length about both the book and his father’s decision. *Id.* at 176, 179. However, the nature of his statements was also significant. The supreme court noted that in discussing the book, the trial judge “acknowledged its significance to the defendant’s case.” *Id.* at 178-79. Similarly, he specifically commented on the similarities between the *Dameron* case and the case his father presided over in 1966. *Id.* at 179. While we acknowledge that the court in this case spent a considerable amount of time discussing what he called “the scourge” of methamphetamine use in Fayette County, we do not believe any of the court’s statements in this case raise similar concerns to the statements made in *Dameron*.

¶ 61 A sentencing court is permitted to engage in commentary and make “some personal observations” as long as the court also considers all relevant factors in aggravation and mitigation. *People v. Kolzow*, 301 Ill. App. 3d 1, 9 (1998). In doing so, the sentencing judge is not required to ignore his prior experience and observations. “Indeed, it is precisely that experience that grounds the decision in a particular case in the value system of the community.” *Tye*, 141 Ill. 2d at 23.

¶ 62 Finally, the defendant argues that the court’s comments indicate that the trial court did not accept the jury’s verdict of second degree murder, rather than first degree murder. In particular, he points to the court’s observation that methamphetamine “makes people paranoid where they are not thinking rationally, but they still know what they are doing,” followed by commentary on how

difficult it was to understand the contrast between the defendant's assertion that he shot Smith due to methamphetamine-fueled paranoia and the "calm, cool" steps he took to hide evidence after the shooting. We are not persuaded.

¶ 63 We first note that defense counsel specifically addressed the appropriate impact of the jury's verdict in his arguments. He specifically argued that the court could not impose a harsh sentence based on a belief that the jury let him off easy by finding him guilty of second degree murder rather than first degree murder. As we discussed earlier, the trial judge expressly stated that he agreed with this argument.

¶ 64 We further note that the court appears to have given at least some credence to the defendant's testimony that he was paranoid due to his use of methamphetamine when he shot Smith. As we discussed earlier, the court expressed concern over the possibility that the defendant could have shot and killed other innocent bystanders had he encountered anyone after the shooting, while he still felt paranoid. Viewing the court's statements in context, we do not believe the court unfairly imposed a harsher sentence because the court disagreed with the jury's finding. We likewise find no merit to his contentions that the court erroneously based its decision on speculation, generalizations, or outside information.

¶ 65 *2. Factor Inherent in the Offense*

¶ 66 We next consider the defendant's contention that the court considered a factor inherent in the offense of second degree murder as a factor in aggravation. Although trial courts have broad discretion in sentencing, they must not consider factors that are inherent in the offense as factors in aggravation. See *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 9; *Dowding*, 388 Ill. App. 3d at 942. "Stated differently, a single factor cannot be used both as an element of an offense and as a basis for imposing 'a harsher sentence than might otherwise have been imposed.'" *People v. Morrow*,

2014 IL App (2d) 130718, ¶ 13 (quoting *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992)). Such “double enhancements” are improper because we must assume the legislature took into account factors inherent in the offense when it prescribed the sentencing range for the offense. *Id.*

¶ 67 In determining whether the trial court erroneously considered a factor inherent in the offense in aggravation, we must view the record in its entirety rather than focusing on isolated statements made by the court. *Id.* ¶ 14. As stated previously, we must presume that the trial court employed sound legal reasoning. *Id.* As such, it is the defendant’s burden to demonstrate that his sentence was based on an improper factor. *Dowding*, 388 Ill. App. 3d at 943. Our review is *de novo*. *Morrow*, 2014 IL App (2d) 130718, ¶ 14.

¶ 68 Here, the court expressly stated that it was considering harm to Smith as a factor in aggravation. We must therefore consider whether remand is necessary. When a trial court considers an improper sentencing factor in aggravation, remand is not always necessary. However, remand is required unless it appears from the record that the court placed such insignificant weight on the improper factor that we can conclude that the factor did not result in a harsher sentence. *Dowding*, 388 Ill. App. 3d at 945. We consider (1) whether the trial court’s comments regarding the improper factor were dismissive or emphatic and (2) whether the sentence imposed was substantially lower than the statutory maximum sentence for the offense. *Id.*

¶ 69 The court in this case neither emphasized nor dismissed the improper factor, and imposed the statutory maximum sentence. Thus, we cannot determine how much weight the court gave the inappropriate factor. The State points out, however, that the fact that a defendant’s conduct caused or threatened serious harm is *not* a factor inherent in the offense of unlawful possession of a weapon by a felon. The State emphasizes that a trial judge is presumed to know and correctly apply the law. See *Morrow*, 2014 IL App (2d) 130718, ¶ 14. The State urges us to presume that the trial

court correctly considered the improper sentencing factor only as it related to the sentence imposed for unlawful possession of a weapon by a felon. We decline to do so.

¶ 70 The court discussed factors in mitigation and aggravation only once before imposing a sentence for either offense, and at no point did the court explicitly make a distinction between the factors applicable to each charge. In light of this, and in light of the fact that the court imposed the maximum sentence, we cannot conclude that the court gave so little weight to the improper factor that it did not result in a harsher sentence on the second degree murder charge. We also note that at the hearing on the defendant's motion to reconsider sentence, the court did not add any clarity to the question. While the court emphasized the need to deter others and the risk that the defendant would reoffend, the court also mentioned the fact that the defendant's conduct caused Smith's death. The court again did not distinguish between aggravating factors applicable to each sentence. It is worth noting that the defendant only asked the court to reduce his second degree murder sentence at that hearing. Because the record before us does not allow us to conclude that the improper factor did not result in a harsher sentence, we must vacate the defendant's sentence for second degree murder and remand this matter to the trial court to reconsider that sentence without considering Smith's death as a factor in aggravation.

¶ 71 B. Sentence for Unlawful Possession of a Weapon by a Felon

¶ 72 In the defendant's opening brief, he argues that an extended term sentence for unlawful possession of a weapon by a felon was not authorized. As he correctly contends, where multiple offenses are charged, the imposition of extended term sentences is limited "to offenses within the most serious classification." *People v. Reese*, 2017 IL 120011, ¶ 83. An exception to this rule applies to separately charged offenses that arise from separate, unrelated courses of conduct. *Id.*

Here, the two offenses arose from the same course of conduct and were charged together. Thus, an extended term sentence is appropriate only on the second degree murder charge.

¶ 73 The State concedes that an extended term sentence was not authorized for the charge of unlawful possession of a weapon by a felon. It points out, however, that even though the trial judge imposed what he referred to as an extended term sentence, the 10-year sentence fell within the nonextended term range for the offense. See 720 ILCS 5/24-1.1(e) (West 2016). As we mentioned earlier, the general sentencing provision for Class 3 felonies prescribes a nonextended term sentence range of 2 to 5 years and an extended term range of 5 to 10 years. 730 ILCS 5/5-4.5-40(a) (West 2016). The court appears to have applied the wrong sentencing statute. The State argues that, because the 10-year sentence was authorized by the correct sentencing provision (720 ILCS 5/24-1.1(e) (West 2016)), we may affirm the defendant's sentence.

¶ 74 In reply, the defendant argues that we must remand for resentencing because the court applied a less favorable sentencing range than was appropriate. That is, the court erroneously believed that the applicable range was 5 to 10 years, the general extended term sentence for Class 3 felonies (730 ILCS 5/5-4.5-40(a) (West 2016)), rather than 2 to 10 years, the nonextended term sentence range specifically applicable to unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(e) (West 2016)). We agree with the State.

¶ 75 We reach this conclusion for two reasons. First, the imposition of an extended term sentence is discretionary, not mandatory. See 730 ILCS 5/5-5-3.2(b) (West 2016) (stating that the applicable factors “*may* be considered by the court as reasons to impose an extended term sentence” (emphasis added)). Thus, the general Class 3 sentencing statute gave the court the option to sentence the defendant to anywhere from 2 to 10 years in prison, the same range available under the correct sentencing provision. See 720 ILCS 5/24-1.1(e) (West 2016). Second, it is clear from

the record that the court intended to impose the maximum sentence. For these reasons, we find that the sentence was authorized by statute and that there is no need to remand for resentencing. We note, however, that it may be necessary to amend the mittimus to reflect the correct provisions.

¶ 76

III. CONCLUSION

¶ 77 For the foregoing reasons, we affirm the defendant's sentence for unlawful possession of a weapon by a felon. However, we vacate his sentence for second degree murder and remand for sentencing on that charge without consideration of Smith's death as a factor in aggravation. We also direct the court to amend the mittimus to reflect the correct sentencing provisions, if necessary.

¶ 78 Affirmed in part and vacated in part; cause remanded with directions.